

EXECUTIVE SUMMARY

(First Reading)



To: Patti McLauchlin, City Manager
Through: Katie P. Halloran, Planning Director
From: Katie P. Halloran, Planning Director
Meeting Date: September 14, 2021 (first reading)
January 4, 2022 (second reading)

Agenda Item: **Text Amendment of the Comprehensive Plan** – An Ordinance of the City of Key West, FL, to create a new Comprehensive Plan Element entitled, “Chapter 10, Property Rights Element”, and Goal 10-1, Objective 10-1.1, and Policies 10-1.1.1-10-1.1.4 to comply with State of Florida Statutes Section 163.3177(6)(i)1.; providing for transmittal to the State Land Planning Agency; providing for filing with the Secretary of State; providing for severability; providing for repeal of inconsistent provisions; providing for an effective date; and providing for inclusion into the City of Key West Comprehensive Plan.

Action Statement:

The purpose of this ordinance is to amend the City’s Comprehensive Plan to create a new Comprehensive Plan Element entitled, “Chapter 10, Property Rights Element” to comply with recently adopted State of Florida Statutes Section 163.3177(6)(i)1. (Chapter 2021-195, Laws of Florida).

Background:

The proposed ordinance to amend the City’s Comprehensive Plan is a mandatory requirement enacted by the State of Florida through an amendment to the Community Planning Act. The associated laws require that any local government Comprehensive Plan amendments initiated after July 1, 2021, must be accompanied by an amendment to create a Property Rights element in each local governments’ Comprehensive Plans. (Section 163.3177(6)(i)2.)

The stated intent of this new legislation is to, “. . . respect judicially acknowledged and constitutionally protected private property rights” and to, “. . . ensure that private property rights are considered in local decisionmaking.”

The proposed ordinance to amend the City’s Comprehensive Plan was recommended for approval by the Planning Board through adoption of Resolution No. 2021-40 on August 19, 2021, at a regularly schedule Planning Board meeting.

Update: on December 13, 2021, the City of Key West received correspondence from the State of Florida’s Department of Economic Opportunity (DEO). The DEO issued the City an Objection, Recommendations, and Comments (ORC) report outlining one objection and one concern associated with the City’s proposed ordinance to comply with Florida Statutes Section 163.3177(6)(i)1. The City of Key West Planning and Legal Departments have reviewed the ORC, accept the proposed changes, and have suggested modifications to the draft ordinance to ensure compliance with state law, for your review and approval at Second Reading.

Request / Proposed Text Amendment:

Chapter 10: - Property Rights Element

Goal 10-1 The City of Key West will make planning and development decisions with respect for property rights and with respect for people’s rights to participate in decisions that affect their lives and property. The City will consider private property rights in all local decision making in accordance with State Statute Section 163.3177(6)(i)(1).

Objective 10-1.1. The City of Key West will respect judicially acknowledged and constitutionally protected private property rights.

Policy 10-1.1.1 The City of Key West will consider in its decision-making the right of a property owner to physically possess and control his or her interests in the property, including easements, leases, or mineral rights.

Policy 10-1.1.2 The City of Key West will consider in its decision-making the right of a property owner to maintain, develop, and improve his or her property for personal use or for the use of any other person, subject to state law and local ordinances.

Policy 10-1.1.3 The City of Key West will consider in its decision-making the right of the property owner to privacy and to exclude others from the property to protect the owner’s possessions and property.

Policy 10-1.1.4 The City of Key west will consider in its decision-making the right of a property owner to dispose of his or her property through the sale or gift.

Land Development Regulations Text Amendment Process:

Planning Board:	August 19, 2021 (Planning Board Res. 2021-40)
City Commission:	September 14, 2021 (first reading)
City Commission:	January 4, 2022
Local Appeal Period:	30 Days
City Clerk renders to DEO:	10 working Days
DEO Review:	Up to 45 Days
DEO Final Order:	Comprehensive Plan amendment becomes effective when the final order is received

Analysis:

The purpose of Chapter 90, Article VI, Division 2 of the Land Development Regulations (the “LDRs”) of the Code of Ordinances (the “Code”) of the City of Key West, Florida (the “City”) is to provide a means for changing the text of the Comprehensive Plan. It is not intended to relieve particular hardships nor to confer special privileges or rights on any person, but only to make necessary adjustments in light of changed conditions. In determining whether to grant a requested amendment, the City Commission shall consider, in addition to the factors set forth in this subdivision, the consistency of the proposed amendment with the intent of the Comprehensive Plan.

A full planning staff analysis is available in the planning board staff report.

Other Matters:

The Department of Economic Opportunity will not review proposed local government comprehensive plan amendments initiated after July 1, 2021, unless and until this new Property Rights comprehensive plan amendment has been reviewed and approved. *It is critically important that the City of Key West adopt this proposed amendment to ensure land planning functions can proceed on a timely basis.*

Options / Advantages / Disadvantages:

Option 1:

Approve the proposed Comprehensive Plan text amendment as recommended by the Planning Board through Resolution No. 2021-40.

a. Financial Impact:

There will be no cost to the City if this request is approved.

Option 2:

Deny the proposed Comprehensive Plan text amendment.

a. Financial Impact:

There will be substantial impacts to the City and community if this request is denied. The State Department of Economic Opportunity will return (will not review) any subsequent Comprehensive Plan amendments if compliance is not achieved through adoption of this new Property Rights Element amendment.

Recommendation:

As per Resolution No. 2021-40, the Planning Board recommended to the City Commission Option 1 for approval of the text amendments to the Comprehensive Plan. Staff supports Planning Board Resolution No. 2021-40, and also recommends approval of Option 1 with additional recommended changes for Second Reading.